

CARL J. KUNASEK
CHAIRMAN
JIM IRVIN
COMMISSIONER
WILLIAM A. MUNDELL
COMMISSIONER



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ARIZONA CORPORATION COMMISSION

DATE: December 11, 2000

DOCKET NO.: W-01894A-00-0289, W-03875A-00-0289 and W-01894A-00-0654

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Alicia Grantham. The recommendation has been filed in the form of an Opinion and Order on:

MOUNTAIN GLEN WATER SERVICE, INC. AND
GEORGE M PAPA WATER COMPANY
(CC&N/ORDER TO SHOW CAUSE)


Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

DECEMBER 20, 2000

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

JANUARY 9, 2001 AND JANUARY 10, 2001

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250.


BRIAN C. McNEIL
EXECUTIVE SECRETARY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 CARL J. KUNASEK
CHAIRMAN

3 JIM IRVIN
COMMISSIONER

4 WILLIAM A. MUNDELL
COMMISSIONER

5
6 IN THE MATTER OF THE APPLICATION OF
MOUNTAIN GLEN WATER SERVICE, INC. FOR
7 A CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE WATER SERVICE

DOCKET NOS. W-01894A-00-0289
W-03875A-00-0289

8
9 IN THE MATTER OF GEORGE M. PAPA WATER
COMPANY: COMPLAINT AND ORDER TO
10 SHOW CAUSE.

DOCKET NO. W-01894A-00-0654

DECISION NO. _____

11 **OPINION AND ORDER**

12 DATE OF HEARING:

October 26, 2000

13 PLACE OF HEARING:

Phoenix, Arizona

14 ADMINISTRATIVE LAW JUDGE:

Alicia Grantham

15 APPEARANCES:

William James Parker, on behalf of Mountain
Glen Water Service, Inc.

16
17 George M. Papa, on behalf of George M. Papa
Water Company;

18 Robert Metli, Staff Attorney, Legal Division, on
19 behalf of the Utilities Division of the Arizona
20 Corporation Commission

21 **BY THE COMMISSION:**

22 On May 1, 2000, Mountain Glen Water Company ("Mountain Glen" or "Applicant") filed an
23 application with the Arizona Corporation Commission ("Commission") for approval of a Certificate
24 of Convenience and Necessity ("Certificate") to provide water service for property located in Navajo
25 County, Arizona. The application incorporates the certificated area previously granted to the George
26 M. Papa Water Company ("Papa Water") in Decision No. 34647 (July 10, 1963). Mr. and Mrs.
27 William Parker ("Parkers") purchased the assets of Papa Water at a Public Auction Sale on February
28 23, 2000.

1 On June 9, 2000, the Commission issued a Procedural Order setting Mountain Glen's
2 application for hearing on September 20, 2000, which was later continued until October 26, 2000.

3 On July 13, 2000, Mountain Glen filed an Affidavit of Mailing, indicating that notice of the
4 application was provided to all customers and property owners within the requested certificated area.

5 In Decision No. 62906, dated September 18, 2000, the Commission initiated a Complaint and
6 Order to Show Cause ("OSC") proceeding to rescind Papa Water's Certificate since Papa Water
7 failed to redeem its assets before the August 23, 2000 redemption date.

8 On October 2, 2000, the Commission's Utilities Division Staff ("Staff") filed its Staff Report
9 in the Mountain Glen application, recommending conditional approval of the application.

10 On October 5, 2000, Staff filed a Motion to Consolidate ("Motion") the matters of Mountain
11 Glen and Papa Water indicating that the issues in both matters are substantially related. Without
12 opposition, the matters were consolidated by Procedural Order dated October 18, 2000.

13 Prior to the commencement of the hearing, oral arguments were heard from Papa Water and
14 Staff to determine the issues and the scope of the hearing.

15 On October 26, 2000, a full public hearing was held before a duly authorized Administrative
16 Law Judge of the Commission at its offices in Phoenix, Arizona. Mountain Glen and Staff, through
17 counsel, made appearances and presented evidence. Papa Water made an appearance for oral
18 arguments, and subsequently departed the hearing room prior to the commencement of the hearing.
19 At the conclusion of the hearing, the matter was taken under advisement pending submission of a
20 Recommended Opinion and Order to the Commission.

21 * * * * *

22 Having considered the entire record herein and being fully advised in the premises, the
23 Commission finds, concludes, and orders that:

24 **FINDINGS OF FACT**

25 1. Papa Water has been operated as a sole proprietorship engaged in the business of
26 providing water service to the public by means of four water systems in Linden, Pinedale and Clay
27 Springs, northwest of Show Low, Arizona, pursuant to authority granted by the Commission in
28

1 Decision No. 34647 (July 10, 1963).¹

2 2. On February 23, 2000, the assets associated with Papa Water were sold to the Parkers
3 at public auction held by the Arizona Department of Revenue ("ADOR") pursuant to A.R.S. § 42-
4 1201, for delinquent sales taxes.

5 3. Pursuant to A.R.S. § 12-1281, Papa Water had until August 23, 2000 to pay all back
6 taxes and applicable fees and interest in order to redeem its assets.

7 4. The Parkers formed Mountain Glen and filed an application with the Commission on
8 May 1, 2000 for a Certificate to provide water service to the area previously certificated to Papa
9 Water.

10 5. On July 6, 2000, Ms. Deborah Hilton filed a Motion to Intervene in the Mountain Glen
11 application, stating that she had a well on her property and did not wish to receive water from a water
12 provider. There was no objection to the intervention, which was subsequently granted on July 19,
13 2000.

14 6. On July 13, 2000, Mountain Glen filed an Affidavit of Notification, stating that the
15 customers and property owners within its requested certificate area were mailed a copy of the notice
16 of the application. Notice of the application was also accomplished by publication in a local
17 newspaper.

18 7. Papa Water failed to redeem the assets before the August 23, 2000, redemption date,
19 and the assets passed to the Parkers.

20 8. As stated in A.R.S. § 40-361, every public service corporation is required to furnish
21 and maintain service, equipment, and facilities to promote safety, health, comfort and convenience of
22 the public.

23 9. Since Papa Water no longer owns the facilities or equipment necessary to provide

24
25 ¹ On September 16, 1996, the Commission issued a Complaint and Order to Show Cause against Papa Water in Decision
26 No. 59828. Subsequently, in Decision No. 59952 (January 6, 1997), the Commission authorized Staff to take any action
27 necessary to remove Mr. Papa as the operator of Papa Water if the conditions established in the Decision were not
28 satisfied. The Decision also authorized Staff to engage a qualified management entity to operate and manage the water
system in order to bring the water system into full compliance with Arizona law, Commission Rules, and past
Commission Orders. Papa Water failed to comply with Decision No. 59952, and on September 28, 1998, Navajo County
Superior Court awarded the Commission summary judgment, removing Mr. Papa as an employee and operator of Papa
Water. In addition, a management company was authorized to act as an interim manager to operate Papa Water.

1 water service to the certificated area, the Commission initiated a Complaint and OSC proceeding to
2 rescind Papa Water's Certificate in Decision No. 62906 (September 18, 2000).

3 10. On October 19, 2000, Papa Water filed a Response to the OSC, making several
4 arguments.²

5 11. On October 20, 2000, Papa Water filed a Supplemental Response, addressing the Staff
6 Report that was filed in the Mountain Glen application.³

7 12. On October 25, 2000, Staff filed a Reply to Papa Water's Response, addressing each
8 of the issues presented by Papa Water.⁴

9 13. On October 26, 2000, oral arguments were heard prior to the commencement of the
10 hearing to determine the scope of the hearing. The presiding Administrative Law Judge determined
11 that the hearing would only pertain to the specific issue regarding the deletion of Papa Water's
12 Certificate and the granting of Mountain Glen's Certificate. The parties were asked to refrain from
13 presenting evidence or testimony pertaining to other arguments set forth in the filed pleadings. The
14 owner of Papa Water excused himself following the ruling on oral arguments and was not present for
15 the hearing.

16 14. Staff presented evidence and testimony at the hearing pertaining to the deletion of
17 Papa Water's Certificate.

18
19 ² Papa Water's response involved several arguments. The first argument stated that a Commission Decision to remove
20 the Certificate from Papa Water would result in a taking and confiscation of Papa Water's property. Additionally, Papa
21 Water argued that the Commission has repeatedly failed to grant Papa Water reasonable rates that would allow the
22 company to remain viable. Papa Water also made collateral attacks on previous Commission Decisions, after Mr. Papa
failed to appeal those prior Decisions. Pursuant to A.R.S. § 40-253, a party may apply for a rehearing of a Decision
within 20 days, and A.R.S. § 40-254.01 provides a party with further opportunity to appeal a Decision to the Arizona
Court of Appeals.

23 ³ Papa Water's Supplemental Response made additional statements that the Commission had failed to perform its duty in
24 determining just and reasonable rates for Papa Water. Additionally, Papa Water argued that passing of legal title of the
water utility assets was contingent upon the Commission's deletion of Papa Water's Certificate and the granting of a
Certificate to Mountain Glen.

25 ⁴ Staff's response stated that Papa Water's "takings" argument had previously been litigated in Superior Court and was
26 therefore res judicata. In addition, Staff stated that the Commission was unable to process prior rate applications for Papa
27 Water due to the fact that Papa Water was unable or unwilling to provide financial information necessary to process such
an application. Staff also stated that Papa Water's collateral attacks on previous Commission Decisions were unlawful
pursuant to A.R.S. § 40-252. Finally, Staff addressed Mr. Papa's argument as to the passing of the legal title of the water
28 utility assets, and stated that legal title to the assets of Papa Water transferred to the Parkers after the redemption period
ended on August 23, 2000.

1 15. Staff stated at the hearing that the deed for the water assets of Papa Water had been
2 transferred to the Parkers. Additionally, the deed was recorded on August 25, 2000.

3 16. Staff also presented a letter from ADOR that stated the assets would not revert back to
4 Mr. Papa, regardless of the Commission's Decision on Mountain Glen's application for a Certificate.

5 17. Staff stated at the hearing that the deletion of Papa Water's Certificate would be in the
6 public interest.

7 18. Staff recommended that Papa Water's Certificate be deleted, since Papa Water no
8 longer has the equipment and facilities to furnish and maintain service. Staff also stated that the
9 Commission has the authority to rescind Papa Water's Certificate since it no longer has the ability to
10 provide service to its customers.

11 19. Mountain Glen currently provides water service to approximately 268 customers
12 which were previous customers of Papa Water.

13 20. Mr. William Parker serves as the chairman of the board for the Community of Clay
14 Springs ("Community") which has operated a water utility for two years. In addition, Mr. William
15 Parker stated that he has experience in many aspects of small water systems and has completed a
16 course from a university on small water system management and operation.

17 21. Mountain Glen will retain its certified operator until such time as Mr. William Parker
18 becomes a certified operator.

19 22. Mountain Glen is current on its property and sales taxes, with the exception of the
20 delinquent property taxes owed by Papa Water. Mountain Glen is currently negotiating with Navajo
21 County for those delinquent taxes.

22 23. According to Staff, Mountain Glen is not located within an Active Management Area
23 and is not subject to conservation and monitoring requirements.

24 24. Engineering Staff inspected Mountain Glen's facilities on April 4, 2000, and
25 determined that the four water systems are out of compliance with the Arizona Department of
26 Environmental Quality ("ADEQ") for both physical plant and water quality violations. These
27 violations occurred under the ownership of Papa Water.

28 25. Staff's Report states that there are a number of customer meters that are inoperable

1 and the wells have no meters.

2 26. At the time of the hearing, Mountain Glen had installed two of the four well meters
3 and a portion of the previously inoperable customer meters. In addition, Mountain Glen had
4 performed the testing required by ADEQ.

5 27. According to Staff, initial rates for a water system are based on assumptions regarding
6 operating expense levels, growth projections and plant investments since historical operational data is
7 not available. However, in Mountain Glen's application, since there was a previous certificated area
8 known as Papa Water, historical data exists, as well as a recent Commission Decision.

9 28. Commission Decision No. 62905 (September 18, 2000) determined rates for Papa
10 Water, using a Test Year ended October 31, 1999. Since actual operational data, including plant in
11 service, expense levels and revenues were used to determine the rates in that Decision, Staff
12 recommended that Mountain Glen charge the same rates and charges approved in Decision No.
13 62905.

14 29. Staff recommended conditional approval of Mountain Glen's application.

15 30. Staff recommended that Mountain Glen submit to the Director of Utilities, within 90
16 days from the effective date of a Decision in this matter, an affidavit stating that all wells have been
17 metered and that the previously inoperable customer meters have been replaced or repaired.

18 31. Staff also recommended that Mountain Glen submit written documentation from
19 ADEQ within 180 days from the effective date of a Decision in this matter, stating that Mountain
20 Glen is providing water with no maximum contaminant level violations and meets the Safe Drinking
21 Water Act.

22 32. Staff further recommended that Mountain Glen comply with all provisions of
23 Commission Decision No. 62905, and any other pending compliance items that have been imposed
24 by the Commission for Papa Water.

25 33. At the hearing, Mountain Glen agreed to abide by Staff's recommendations.

26 **CONCLUSIONS OF LAW**

27 1. Mountain Glen and Papa Water are public service corporations within the meaning of
28 Article XV of the Arizona Constitution and A.R.S. §§40-281, 40-282 and 40-285.

2. The Commission has jurisdiction over Mountain Glen and Papa Water and the subject matter of the application and OSC.

3. Notice of the hearing on the application of Mountain Glen was given in accordance with the law.

4. There is a continuing need for the provision of water utility service to the public in the area previously certificated to Papa Water and requested by Mountain Glen.

5. Mountain Glen is a fit and proper entity to receive a Certificate for the area previously certificated to Papa Water.

6. The public convenience and necessity require the deletion of Papa Water's Certificate since Papa Water no longer owns the water utility assets.

7. Staff's recommendations, as set forth in Findings of Fact Nos. 18, 29, 30, 31 and 32 are reasonable and should be adopted.

ORDER

IT IS THEREFORE ORDERED that the Certificate of Convenience and Necessity previously issued to the George M. Papa Water Company in Decision No. 34647 be, and hereby is, rescinded.

IT IS FURTHER ORDERED that the application of Mountain Glen Water Company for a Certificate of Convenience and Necessity for an area previously certificated to the George M. Papa Water Company be, and is hereby, approved as conditioned below.

IT IS FURTHER ORDERED that Mountain Glen Water Company shall submit an affidavit to the compliance section of the Utilities Division within 90 days from the effective date of this Decision, stating that all wells have been metered and the previously inoperable customer meters have been replaced or repaired.

IT IS FURTHER ORDERED that Mountain Glen Water Company shall submit documentation from ADEQ to the compliance section of the Utilities Division, within 180 days from the effective date of this Decision, stating that Mountain Glen Water Company is providing water that does not exceed maximum contaminant levels and meets the Safe Drinking Water Act.

...

...

1 IT IS FURTHER ORDERED that Mountain Glen Water Company shall comply with all
2 provision of Commission Decision No. 62905, and any other pending compliance items previously
3 imposed on the George M. Papa Water Company, within the times specified.

4 IT IS FURTHER ORDERED that Mountain Glen Water Company shall submit a copy of Mr.
5 William Parker's operator certification to the compliance section of the Utilities Division prior to Mr.
6 William Parker becoming the certified operator for Mountain Glen Water Company.

7 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

8 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
9
10

11 CHAIRMAN COMMISSIONER COMMISSIONER
12

13 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
14 Secretary of the Arizona Corporation Commission, have
15 hereunto set my hand and caused the official seal of the
16 Commission to be affixed at the Capitol, in the City of Phoenix,
17 this ____ day of _____, 2000.

18 BRIAN C. McNEIL
EXECUTIVE SECRETARY

19 DISSENT _____
20 AG:bbs
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SERVICE LIST FOR:

MOUNTAIN GLEN WATER SERVICE, INC. AND
GEORGE M. PAPA WATER COMPANY

DOCKET NOS.

W-03875A-00-0289, W-01894A-00-0289 and
W-01894A-00-0654

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